

of departments or major units, and organizers who exercise substantial independent authority)". Other individuals employed by a labor organization, including salaried non-supervisory professional staff, stenographic, and service personnel are "employees" and must be bonded if they handle⁵ funds or other property of the labor organization.

§ 453.6 Officers, agents, shop stewards or other representatives or employees of a trust in which a labor organization is interested.

(a) *Officers, agents, shop stewards or other representatives.* While the definition of the collective term "Officer, agent, shop steward, or other representative" in section 3(q) of the Act is expressly applicable only "when used with respect to a labor organization," the use of this term in connection with trusts in which a labor organization is interested makes it clear that, in that connection, it refers to personnel of such trusts in positions similar to those enumerated in the definition. Thus, the term covers trustees and key administrative personnel of trusts, such as the administrator of a trust, heads of departments or major units, and persons in similar positions. It covers such personnel, including trustees, regardless of whether they are representatives of or selected by labor organizations, or representatives of or selected by employers,⁶ and such per-

sonnel must be bonded if they handle funds or other property of the trust within the meaning of section 502(a).

(b) *Independent institutions not included.* The analogy to the definition of the term "officer, agent, shop steward, or other representative," when used with respect to a labor organization, shows that banks and other qualified financial institutions in which trust funds are deposited are not to be considered as "agents" or "representatives" of trusts within the meaning of section 502 and thus are not subject to the bonding requirement, even though they may also have administrative or management responsibilities with respect to such trusts. Similarly, the bonding requirement does not apply to brokers or other independent contractors who have contracted with trusts for the performance of functions which are normally not carried out by officials or employees of such trusts such as the buying of securities, the performance of other investment functions, or the transportation of funds by armored truck.

(c) *Employees of a trust in which a labor organization is interested.* As in the case of labor organizations, all individuals employed by a trust in which a labor organization is interested are "employees," regardless of whether, technically, they are employed by the trust, by the trustees, by the trust administrator, or by trust officials in similar positions.

⁵For discussion of "handle", see § 453.8.

⁶See the contrast between section 308 of S. 1555 as passed by the Senate ("All officers, agents, representatives, and employees of any labor organization engaged in an industry affecting commerce who handle funds of such organization or of a trust in which such organization is interested shall be bonded * * *") and section 502 of the Act as finally enacted. The change between the two versions originated in the House Committee on Education and Labor. Prior to the reporting of the bill (H.R. 8342) by that Committee, a joint subcommittee of that Committee held extensive hearings, during the course of which witnesses including President Meany of the AFL-CIO criticized the bonding provision of the Senate bill on the ground that it required only union personnel of joint employer-union trusts to be bonded. (See Record of Hearings before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th

[28 FR 14394, Dec. 27, 1963, as amended at 50 FR 31311, Aug. 1, 1985]

§ 453.7 "Funds or other property" of a labor organization or of a trust in which a labor organization is interested.

The affirmative requirement for bonding the specified personnel is applicable only if they handle "funds or other property" of the labor organization or trust concerned. A consideration of the purpose of section 502 and a reading of the section as a whole, including provisions for fixing the amount of bonds, suffice to show that the term "funds or other property", as

Congress, 1st Session, on H.R. 3540, H.R. 3302, H.R. 4473 and H.R. 4474, pp. 1493-94, 1979.

used in this section of the Act, encompasses more than cash alone but that it does not embrace all of the property of a labor organization or of a trust in which a labor organization is interested. The term does not include property of a relatively permanent nature, such as land, buildings, furniture, fixtures and office and delivery equipment used in the operations of a labor organization or trust. It does, however, include items in the nature of quick assets, such as checks and other negotiable instruments, government obligations and marketable securities, as well as cash, and other property held, not for use, but for conversion into cash or for similar purposes making it substantially equivalent to funds.

§ 453.8 Personnel who “handle” funds or other property.

(a) *General considerations.* Section 502(a) requires “every” person specified in its bonding requirement “who handles” funds or other property of the labor organization or trust to be bonded. It does not contain any exemption based on the amount of the funds or other property handled by particular personnel. Therefore, if the bonding requirement is otherwise applicable to such persons, the amount of the funds or the value of the property handled by them does not affect such applicability. In determining whether a person “handles” funds or other property within the meaning of section 502(a), however, it is important to consider the term “handles” in the light of the basic purpose which Congress sought to achieve by the bonding requirement and the language chosen to make that purpose effective. Thus, while it is clear that section 502(a) should be considered as representing the minimum requirements which Congress deemed necessary in order to insure the reasonable protection of the funds and other property of labor organizations and trusts within the coverage of the section, it is equally clear from the legislative history⁷ and the language used

that Congress was aware of cost considerations and did not intend to require unreasonable, unnecessary or duplicative bonding. In terms of these general considerations, more specific content may be assigned to the term “handles” by reference to the prohibition in section 502(a) against permitting any person not covered by an appropriate bond “to receive, handle, disburse, or otherwise exercise custody or control” of the funds or other property of a labor organization or of a trust in which a labor organization is interested. The phrase “receive, handle, disburse, or otherwise exercise custody or control” is not to be considered as expanding the scope of the term “handles” but rather as indicating facets of “handles” which in a specific prohibition, Congress believed should be clearly set forth.

(b) *Persons included generally.* The basic objective of section 502(a) is to provide reasonable protection of funds or other property rather than to insure against every conceivable possibility of loss. Accordingly, a person shall be deemed to be “handling” funds or other property, so as to require bonding under that section, whenever his duties or activities with respect to given funds or other property are such that there is a significant risk of loss by reason of fraud or dishonesty on the part of such person, acting either alone or in collusion with others.

(c) *Physical contact as criterion of “handling.”* Physical dealing with funds or other property is, under the principles above stated, not necessarily a controlling criterion in every case for determining the persons who “handle” within the meaning of section 502(a). Physical contact with cash, checks or similar property generally constitutes “handling.” On the other hand, bonding may not be required for office personnel who from time to time perform counting, packaging, tabulating or similar duties which involve physical contact with checks, securities, or other funds or property but which are performed under conditions that cannot reasonably be said to give rise to

⁷House Report No. 1147, 86th Congress, 1st Session, p. 35; Daily Cong. Record 16419, Senate, Sept. 3, 1959; Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare on S.

505, S. 748, S. 76, S. 1002, S. 1137, and S. 1311, 86th Congress, 1st Session, p. 709.